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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

JOHN F.CHOW,M.D.,PHARM.D. and ESTHER CHOW,dba HEALING ART PHARMACY,

Petitioners,

vs.

CALIFORNIA STATE BOARD OF PHARMACY,et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARY TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Petitioners

911

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Lower Courts and Administrative Office's decision violated Petitioners' Constitutional Rights(1st,4th,5th, 6th,9th and 14th Amendment),instantly finding CHOWS to be guilty of felonious crime of burning,destroying or secreting records, which were stolen from their car when it was towed away on JUNE 6, 1982,which charges were concocted during the secret burglaries of Petitioners' business and private home

2. Whether the prejudiced, inconsistent 'opinion'of the lower courts which were not reported and unpublished,concealed since OCTOBER 26,1982,are so severe as to be utterly and irreversibly degrading the very essence of human dignity,inapposite to California Constitution Article I §12 [App.D,pp 19a-23a] shocking the conscience (*People v. Flores,37 Cal.App.2d 282*),inapposite to California Court Rule 977(a)

3. Whether Government agencies do not

have to exhaust the administrative remedies first,prior to petitioning to the Superior Court to compel any request,i.e.order to show cause, pick and choose statutes against Congress' intent,under color of law,injuring CHOWS herein,with impunity in a whimsical manner,as retaliatory measurements against CHOWS,after they filed action for false imprisonment and malicious prosecution

4. Whether the acts complained herein formed the pattern of "racketeering activities" by Board,the Attorney General,private parties,law firms and the Sheriffs(shooting their way into CHOWS' private dwelling)who utilized the State Courts to accomplish their ill motives,fall under Title 18 U.S.C. §§ 1961 et seq pursuant to *Manton, 107 F2d 803; Clark, 646 F2d 1259; Long ,651 F2d 239 and Altomare, 625 F2d 5)* [App.H,pp 40a-46a]

5. Whether Congress intent for private citizens to act as "private attorney generals" *Wood v. Breier, 54 F.R.D. 7 at 10-11*

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Copies to: John van de Kamp(3580 Wilshire Blvd,Los Angeles,CA 90010;Cal.Supreme Court and Second Court of Appeal; Superior Court,Dept.86,Los Angeles,CA 90012: May 5, 1986, Rosemead,California

IN THE

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OCTOBER TERM, 1986

JOHN CHOW,M.D.,PHARM.D. and
ESTHER CHOW,dba HEALING ART
PHARMACY,

Petitioners,

vs.

CALIFORNIA STATE BOARD OF
PHARMACY,etc.,et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARY TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioners respectfully pray that a writ of certiorary issue to review the decision of the California Supreme Court of January 15, 1986.

OPINIONS BELOW

The California Supreme Court denied Petitioners' Petition for Review of the

unpublished report and decisions of the California Superior Courts and Second District Court of Appeal which affirm the Los Angeles County Superior Court writ of Mandate [App.E and F] falsely accusing Petitioners of secreting,burning or destroying records which were stolen on JUNE 6, 1982,beyond Chows' control or fault,without any opportunity to confront their accusors pursuant to*Andrade v. Hauck, 452 F2d 1071*

JURISDICTION

The California Supreme Court's denial of review was issued January 15, 1986. This Court has jurisdiction under 28 U.S.C. §§ 1254,1257(3)and Rule of The Supreme Court Rule 44.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

United States Constitution,First Amendment states in particular part:

> ". .to petition the Government for a redress of grievances."

FIFTH AMENDMENT:

" Nor shall any person. . be deprived of life, liberty, or property, without due process of law. ."

SIXTH,NINTH and FOURTEENTH AMENDMENT are herein incorporated as fully stated.

ARTICLE 6 ,CLAUSE 2:

" Judges in every state s h a l l be bound by the Supremacy of the Constitution and the laws of the United States: SEPARATION OF POWERS-- Legislative, Executive and Judiciary

BUSINESS and PROFESSIONS CODE

§ 4350: " Every certificate,license, permit. .may be suspended or revoked. . The proceedings under this article s h a l l be conducted in acordance with Chapter 5 (commencing with § 11500 of the Government Code)."

§ 4080.5: " The Board shall not issue any new permit nor shall any existing permit be renewed after January 1, 1985, to conduct a pharmacy to any of the following:
(1) A person or persons authorized to prescribe or write prescription. .
(2) A person or persons with whom a person in (1) shares a community or other financial interest in the permit sought.
(3)b. Subdivision (a) SHALL NOT PRECLUDE THE ISSUANCE OF A PERMIT

FOR AN IN-PATIENT-HOSPITAL PHARMACY . . TO THE OWNER OF THE HOSPITAL IN WHICH IT(pharmacy) IS LOCATED. . "

See Appendixes A to H for further intentional and wanton violations of Petitioners' Constitutional Rights under 'color of State laws '.

STATEMENT OF THE CASE

Petitioners,licensed pharmacist(since 1959 and licensed Medical Doctor since 1971, JOHN F.CHOW,M.D.,PHARM.D.) and ESTHER CHOW, a Medical Technologist since 1961, the sole owner of HEALING ART PHARMACY, filed this Petition for Writ of Certiorary and Extraordinary Stay of Enforcement of the threatening revocations of their permit and license pursuant to non-testimonial identifications of CHOWS for "burning,destroying or secreting of evidence" when Respondent BOARD concealed the fabricated rigged up statements and "ashes"which was not produced during the prejudicial and delayed administrative hea-

rings,denying Petitioners to confront and challenge the accusors [App.D,p22 a]

On July 1979, Board inspected Healing Art Pharmacy as a routine inspection. However, unknown to Petitioners, since April 1979, inspectors SANTORO,SAIN,GROW and SORBELLO secretly prepared fabricated statement charging DR.CHOW of wearing "two hats" which is absolutely legal pursuant to California Constitution Article I § 7(a) and (b).

Since 1973, Board and their inspectors were clearly aware of the fact that JOHN CHOW had been wearing the two hats stated in his application which was deliberately destroyed on AUGUST 17, 1984(emphasis added, see App.I)

Permits and license to conduct pharmacy business had been issued on yearly basis without any problem.

Since the initial inspection in 1979, Board,without obtaining a warrant,arrived monthly at Healing Art Pharmacy,inapposite to *Grimmet v. State, 476 S.W2d 217 and Camara v.*

Municipal Court, 387 U.S. at 543, 87 S.Ct. 1741, until April 25, 1980 when,after Board failed to find any wrongdoing, decided to unlawfully remove the audited records, seen since JULY 1979, handcopied by inspectors KENNETH EUGENE SAIN and ROBERT EARL GROW, into 36 pages of complete informations from the original pharmacy prescriptions, having absolutely no difficulties to "decipher" any and all writings from the prescriptions above. See pp 4a-6a

After verbally abusing and intimidating Petitioners on APRIL 25, 1980, inspectors acted outside their attorney general deputy Ms.JANE WIGOD's advise to accept copies of the audited records. As should be clear, these facts, both and to follow, demonstrate a surreptitious plan to abscond with the original prescription records of HEALING ART PHARMACY between 1979 and 1980. Further facts showed that a former patient of Dr.CHOW would in the same period file a medical malpractice against

him and the disappearance of the records,which were sealed by Board inspector SAIN on July 14, 1981,more than one year from the last unwarranted "visit" on April 25, 1980, would be central to the survivability of said malpractice action, records which were stolen from the car when same was towed away for allegedly parking only " inches too close to a fire hydrant" (ticketing officer testified that he had towed away the car). This same officer was not allowed to testify when Petitioner ESTHER subpoenad him on JULY 22, 1982 before judge (Superior Court) who falsely imprisoned her for contempt when judge knew he lacked complete and total personal and subject matter jurisdiction over ESTHER under *Zeller v. Rankin, 633 F2d 844, 101 S.Ct.2020 (personal and subject matter jurisdiction are conjunctional) and Grant v. Superior Court, 214 Cal.App.2d 15,29(* violation of 'order' that exceeds court's jurisdiction cannot produce judgment of contempt.)

Under duress,threats and coercion, Dr. Chow had to settle the case after the trial judge's instruction to the jury, over strong and vehement objections made by Petitioners, that there were no substantial evidence of any guilt on the part of Petitioners who were and are still falsely accused of "burning,destruction or secreting " of records; . . but no others, Dr.CHOW,having been in the enterprise of providing medical service from 1973 to date without any blemish, and there has never been hide nor hair of complaint against either the operation of the pharmacy or the medical service. However,this single transaction of preposterous proportion, involved State Attorney General deputies, politically appointed commisioners,freewhealing investigators and a far fetch actor feigning in an out of drug addiction,being a drug addict. Investigator SAIN admitted that he had personally overruled the advise of his

legal advisor JANE WIGOD,stated on [App.A,p 3a] that

> "such copying procedure would be followed. .That was one of the option that I was given."

The foreseeable and now historic result of said investigators' AUDICITY, must be revealed though it seems as only those kinds of facts that bad dreams would be made of.[App. A p 7a]

Had the copies of the records been accepted as per the legal counsel's agreement, then the Petitioners would not have the copied offered and the originals in their car which records were stolen as stated above for which 'crime" ESTHER CHOW was falsely imprisoned for 24 days: JUNE 30,1982 until JULY 23, 1982,inapposite to Code of Civil Procedure stated on App. H 40a , California Constitution Article I § 12 (she was denied to set bail for 3 times on JUNE 30,1982,JULY 1,1982 and JULY 22,1982,thus she was accused of a felony,

without any further hearing and due process); *Ex Parte Cohen, 6 Cal 318-320* (contempt was not warranted because Court did not have any summons and complaint to proceed over Cohen) similarly situated as ESTHER who was refused by Board and Court to exhaust her administrative remedies first for allegedly committing unprofessional conduct, inapposite to *Wilkinson v. Norcal Ins.Co, 98 Cal.App 3d 307, 199 Cal.Rptr. 416*(exhaustion of administrative remedies is jurisdictional and not a procedural defect);*People v. Coit Ranch, 204 Cal.App.2d 52,57-58* (this case was cited by judge THOMPSON who falsely imprisoned ESTHER in his decisions later in *State Board of Equalization v. O'Hara, cite as 84 D.A.R. 1320,April 1984 and Youst v.Longo, 161 Cal.App.3d 196 which were reviewed by the California Supreme Court.* Judge THOMPSON was repeatedly advised regarding the fact that Respondent had

agreedto accept the copies of the records which were subpoenad pursuant to a null and void ab initio,'investigative'* inapposite to Government Code § 11510 which is the administrative code after Petitioners were falsely accused of shortages(instantly dismissed on the first day of delayed and prejudicial administrative hearings in MARCH 28 through 30,1984,three years after the Notice of Defense was filed by CHOWS on MARCH 30,1981.

Unknown to Petitioners, Respondents, under the auspices,guidance and knowledge of judge THOMPSON,the deputies attorney general GAIL MARIE HEPPEL and EARL ROBERT PLOWMAN, prepared several burglaries of HEALING ART PHARMACY and finally CHOWS' private home in Hesperia,California, soliciting the Temple City Sheriffs and San Bernardino County Sheriffs' department(this department accused "God" of shooting his way into the home on OCOTBER 26,1982,concealed by all agents and

*/subpoena duces tecum

Respondents, Court and Sheriffs since the inception of the burglaries --July,August and October 1982--) only to prepare and fabricate statements of witnesses who trespassed,help burglarized and destroyed Petitioners' reputation,home,community standing,inapposite to the FOURTH,FIFTH,SIXTH NINTH and FOURTEENTH Amendment to the United States Constitution under *DAVIS v. PASSMAN, 99 S.Ct. 2264 at 2268(*cause of action and damages remedy can be implied directly under Fifth Amendment);*Dr.PEMBAUER v. CITY OF CINCINATTI, 106 S.Ct. 1292(*single act of 'caplas'is sufficient to hold Municipality liable for the act--case at bar, three burglaries were incited,provoked and assisted by Board,judge THOMPSON's knowledge,Sheriffs, Attorney General deputies HEPPEL and PLOWMAN,who are the only individuals making the charges against Petitioners of burning, secreting or destruction(Or means introducing alternative,inapposite to the case cited

in People v. Baker(App.F,p 35a] where the court clerk saw the shredded prescriptions in the toilet bowl, 39 Cal.App. 3d 550,while case at bar, only the "fifth generation" non-testimonial identification of the CHOWS by the prosecutors HEPPEL and PLOWMAN who were not under oath, nor had first hand hearsay [App.A p 2a denied by Dr.CHOW; App. D,p22a; pp 19a through 23a]admitted that the records were secreted by Board and their agents,denying CHOWS of complete unhampered access to courts under *United States ex rel. Cleggett v. Pate, 229 F.Supp. 818,821-22; California Motor Transport v. Trucking Unlim.404 U.S. 508,510.* Because no magistrate or judge would issue a warrant to enter Petitioners' business and home, Board, judge Thompson and the deputies(sheriffs and attorney general) conspired together to form a combination of con-conspirators to break into the dwelling without any legal authority to do so, similarily to Dr.PEMBAUER above who was falsely

accused for Medical welfare fraud by the government.

The glaring and daring conduct of Board, deputies attorney general/prosecutors who acted as plaintiffs,accusors and one-man and woman grand jurors,must be sanctioned and the extra-ordinary writ and stay are warranted to set the example when the Court in *DAVIS, supra,* said that

> " Our system of juris-prudence rests on the assumption that all individuals,whatever their position in government, ARE SUBJECT TO FEDERAL LAW: NO MAN IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW. NO OFFICER OF THE LAW MAY SET THAT LAW AT DEFIANCE WITH IMPUNITY. ALL OFFICERS OF THE GOVERNMENT. FROM THE HIGHEST TO THE LOWEST,ARE CREATURES OF THE LAW, AND ARE BOUND TO OBEY IT." Id at 2277.

Petitioner ESTHER directly and repeatedly argued that his court did not have any jurisdiction over her and the null,void subpoena duces tecum,inapposite to laws stated on [App. D,H]--since May 1982 until ESTHER's con-

tempt imprisonment, judge THOMPSON received three personal letters from the prosecutor HEPPELL begging him to hold ESTHER and her attorney in contempt and those personal letters were destroyed by the judge in his chambers after ESTHER requested copies to be made--contempt sought by the Attorney General's office, ex post facto, in pais (remembering that attorney general JANE WIGOD agreed to accept the " pure liberating copy" of the subpoenad records on April 25, 1980, confirmed by SAIN on MARCH 29,1984[App. A]; it must be noted, here, that an amendment to California Pharmacy Law § 11164 requires beginning in 1981 the pharmacists copy to be sent to Sacramento and thus the on-site examination of pharmacy records after 1981(ALJ hearing in 1984) could not be judicially condoned because the subpoening investigator's office or the official subpoena would be moot(issued on November 6,1981 for November 30,

1981(emphasis added) and Board failed to "promptly" take any action within 30 days required by Government Code § 11507.7,[App H 44a], the SDT had expired and would be directed " in-house" with necessary protection by Government Code § 11349.7,requiring clear necessity consistent policy,appropriate authority, and legitimate resolve.

" An 'ex post facto law' is defined as a law which provides for the infliction of punsihment upon a person for an act done which, when it was committed, was innocent; a law which aggravates a crime or makes it greater then when it was committed". Black's Law Dictionary, p 520, 5th Ed.1979.

In case at bar, the false accusations were filed on March 4, 1981, Notice of Defense were filed on March 30,1981 for an administrative hearing and she's repeatedly ordered by judge THOMPSON, inapposite to laws stated on [App H p43a]to appear before SAIN, who was and is not authorized by law to hear,

(inspector is not an attorney,nor could he administer oath prior to taking ESTHER's(46a) deposition), yet judge THOMPSON,acting with impunity and above the law,forcing and threatening ESTHER and continued on doing so up to the present time,when he recruites his 'brothers and sisters' from the Second District Court of Appeal to condenm, accuse and charged Petitioners with crimes who were never formerly charged with an indictment. Not until after JUNE 10, 1983, two days after ESTHER filed actions against all Respondents(SAIN,GROW,SORBELLO,THOMPSON, HEPPELL,PLOWMAN,STATE and BOARD--FOUTZ, FLORIAN,SANTORO,SPOHN) did Respondent file another false accusation,without any new facts to support ESTHER's ability to produce the records which were stolen by Board and their underground con-conspirators,inapposite to *Codd v. Velger, 429 U.S. 624,627* (due process clauseof 14th Amendment requires government to provide individual with opportu-

nity to refute the charge[and] to clear his name." and (see App.C,pp16a-18a)

> " The complainant alleged that the ' state' had caused the plaintiff to be branded as criminal and had caused baseless charges to be brought against him. Even though the commision had not subpoenad the plaintiff to appear before it, the Supreme Court concluded that he had adequately set forth sufficient injury to his [own legally protected interests to accord him standing to challenge. . the act."] THE PERSONAL AND ECONOMIC CONSEQUENCES ALLEGED TO FLOW FROM SUCH ACTIONS ARE SUFFICIENT TO MEET THE REQUIREMENT THAT APPELLANT PROVE A LEGALLY REDRESSABLE INJURY. Id.
>
> APPELLANT'S ALLEGATIONS GO BEYOND THE NORMAL PUBLICITY ATTENDING CRIMINAL PROSECUTION AND HE ALLEGES A CONCERTED ATTEMPT PUBLICITY TO BRAND HIM A CRIMINAL WITHOUT A TRIAL." See *Jenkins v. McKeithen, 396 U.S. 411, 89 S.Ct. 1843*

As *stated on* [App G], the investigatory and prosecutorial staffs of the California Board of Pharmacy,utilizing the Courts,blatanly failed in the barest particulars of due process requirements,i.e. 18 U.S.C. § 2236, searches without a warrant, Camara and Grimmett, supra, as applied to Board of

Pharmacy,see [App.H44aCongress' intent] failed to obtain warranted subpoena duces tecum from the Administrative Law Judge.

State officials may not take retaliatory action against an individual designed either to punish him for exercising his constitutional right to seek redress,judicial relief, or to intimidate or chill his exercise of that right in the future. See*Hall v. Sutton, 755 F2d 1142,1150-51; Garland, 594 F2d 1223* (an act taken in retaliation for the exercise of a constitutionally protected right is actionable under 42 U.S.C § 1983,<u>even when the act, when taken for a different reason,would have been proper.")</u>

Since MARCH 1982, the active members of the "enterprise", being the State Court system, had unmistakeably impacted the lives of Petitioners and their children for the past seven years is most evident, because not once has there been a <u>factual finding and exposition of the evidence,</u>

competent or not, to the purpose that subsequent tribunal review could be had, as the requirement of fact finding and statements of reasons for conclusions of law, where the parties are before the court to determine constitutional questions concerning deprivations of properties, see Davis, supra, and injuries to the persons, is just as poignant and vital as the rule which states that only published DECISIONS can be relied upon as precedents in trials, the fact-finding-court. Because there was a complete failure of proper record making throughout the California State Judicial system including the California Supreme Court, the only conclusion that this Court can come to is that racketeering confederates desired to depublished the legitimate expansion goals of the potential Healing Art Pharmacy and its medical clinic franchise. Because of these tyrannical professional law domain knew that equitable and

appellate review without factual recitation was effectively "unpublished" for further review and being able to fraudulently conceal judicial intimidation,Petitioners did and still suffer more than seven years of egregious oppression and invidious racial discrimination, the body politic Respondents suggesting that they are only " LILLY WHITE AND PURE" and that Petitioners are presumptively charred by Respondents' retaliatory decisions to prosecute and persecute.

Relevant evidence supporting Board's false and manufactured statements made by HEPPEL and PLOWMAN who did not obtain the "eye-witness"' opinion,outside any judicial proceedings, being the 'fruit of the poisonous tree, the first degree burglary of the CHOWS' home and pharmacy,were not allowed to be entered for opposing the third time revocation of HEALING ART PHARMACY[App. D],inapposite to *Weeks v. United States*

232 U.S. 383(the first generation fruit of an unlawful search and seizure were excluded,i.e. documentary evidence). Case at bar, the evidence were prepared,fabricated and hidden, res arcana, res occulta, and */ not until APRIL 26, 1985, during a deposition taken of inspectors SAIN and GROW assisted by the deputies attorney general HEPPEL and PLOWMAN, thus as the court in *Curtis v. County of Los Angeles Retirement Assn, February 20,1986, D.A.R. 545,* the Court of Appeal,Division One,who denied ESTHER three times in 1982, for habeas corpus on JUNE 30,1982- JULY 4,1982,concluded that the Superior Court is authorized under § 1094.5(e) of the Code of Civil Procedure, to receive relevant evidence of events which transpired AFTER THE DATE OF THE AGENCY's DECISION".

Both Petitioners were thus denied their fundamental due process to be fully informed,including evidence and **/ hidden witness, */were discovered, **/confronting

and the First Amendment to the United States Constitution § 9,Clause 3 dictates that NO BILL OF ATTAINDER OR EX POST FACTO LAW shall be passed. AB 1111 § 11349.7 of the Government Code of the State of California similarly requires that a state law first be reviewed as to authority,clarity,consistency, necessity and resolve. (intent to enforce and good faith, subpoena duces tecum warranted, a pretrial"administrative arraignment" See [App.A,D]

With obvious intent to destroy the reputations and run Petitioners out of business, see *FRIEDLANDER v. CIMINO, 520 F2d 318 at 320,* and clearly to discourage Chinese pharmacists,e.g. JOHN CHOW, TONY CHAN and others known to Board and the Attorney General's Office only, by warning CHOWS, the Respondent's ubiquitous power,recruited other public agencies, so as to provide the intimidating presence of fascist's regime, Board and their " sleuthing" tactics, the

offspring of the California Police Officers, by the State Courts providing of safety for these pirates of covert activities within the trusted institutions of government, painting a glossy picture of racketeering activity effectively shielding the progress of totalitarion subversion and bureaucratic Falangism, fascists united for a common purpose, a phalanstery of oppression.

Because of this surplusage of bureaucratic power, "wolves" have entered in, to direct this power so as to increase the "hydraulic power" of the pantheistic phalanstery of politics,wherein the core of the bureacracy remains(comity): *Christmas v. Russell, 72 U.S. 290; U.S. v. Knight, 416 F2d 1181(9th)(*defendant's conduct is sufficient to act as member of enterpise);*YICK WO v. HOPKINS, 118 U.S. 356, 6 S.Ct. 1064 (*efforts to undermine "hands on" operation of Chinese laundries,requiring concrete construction,while the White laundries are excempted),shocking the conscience " there is

no worse injustice than wrongly to strip a man of his dignity' ". THE ESSENCE OF DEMOCRACY, by the Honorable JUSTICE WILLIAM J. BRENNAN,Open Forum, Daily Journal,Page 4, October 21,1985.

REASONS FOR GRANTING A STAY AND WRIT FOR CERTIORARI

1. Case is of such imperative public Importance Requiring Immediate Settlement in This Court(§977a) *FAITZ v. RUEGG,114 CA3d 967*

As described above, CHOWS have been the victims of retaliation because,for the first time in BOARD and Attorney General's Office' history did anyone challenge their misconduct because of the "picking and choosing of the laws,after accusing CHOWS of "burning,destruction or(an alternative,which is not substantial evidence) secreting records. In *McCray v. Maryland, 456 F2d 1, at 6,the Court said that* " Retorically, of what avail is it to the individual to arm him with a panoply of constitutional rights, if when he seeks redress to vindicate them, THE COURTROOM CAN BE HERMATICALLY SEALED AGAINST HIM BY A FUNCTIONARY WHO BY REFUSAL OR NEGLECT IMPEDES

THE FILING OF HIS PAPERS."

2. Petitioners' Judicial Efforts Since 1982 Had Been Oppressed, And Not Once Did The Courts Below Accorded Due Process,To Confront Their Accusors WHO WERE HIDDEN BY RESPONDENTS SINCE AUGUST 1982.

As in the *Matter of President's Commission on Organized Crime, 783 F2d, 3d the Court said that* "It is the only mechanism of hope by which the powers of the Executive and Legislative Branches can be kept separate and accountable to the citizens of the United States."

Board does not contest that revocation of one's livelihood is very serious nor justified without opportunity to present the newly discovered evidence which were concealed by BOARD and their racketeers during the ALJ hearings. Evidence were discovered <u>after</u> the hearings and CHOWS is authorized to present the evidence [pp.17a] to rebut the falsehood of feloneous crime of burning etc. Since "one's business is property. " it cannot be injured or destroyed by the state without due process of law, 42 U.S.C.A. § 1983, Amendm.14,*MARRERO v. CITY OF HIALEAH,625 F2d*

499; Wolff v. McDonnell, 94 S.Ct. 2963 at 2979 (inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence);*Crook 584 F.Supp.1531*

The only punishment,if any, should not be greater than $50 pursuant to § 4331 (App. H,45a],however, it was Board and their underground thieves who destroyed,steal and secreted the records stolen on JUNE 6, 1982.

A/ 3. The Lower Courts Committed Very Obvious and Egregious Errors When Affirming the "Assumption Of Burning to be the Hypothetical Test--[App.D]

Without due regards to the concealment of the vital records that were the basis for the revocation,i.e. "ashes" purportedly showing any burning, Respondent now, again, misled the Courts willingly in that they and the Sheriffs,with their prosecutors are all active participants in the MALEVALENT RAID to destroy and injure the CHOWS. The fabricated investigatory reports were hidden and not part of the ALJ and Writ

A/*Ortiz v. INS,85 Daily Journal D.A.R.3969 December 9,1985*,777 F2d 509

of Mandamus hearings and yet,in both tribunals and as recent as APRIL 21, 1986, the concealed "ashes" belonging to the non-testifying eye-witness himself,testified by inspector GROW on MAY 28, 1984,AFTER THE ALJ hearings[1/]The only testimony was that "Mr. Scott" found ashes in his pool,while the ashes "brought with it also a piece of writing" which could not support any statement and presumption of burning by any of the CHOWS, therefore the re-opening of the evidentiary hearing must be conducted, and as the courts below stated that "the foundation of judicial reliability, is arbitrary and capricious when the agency fails to consider ALL RELEVANT AND IMPORTANT FACTORS OR DOES NOT ARTICULATE A SATISFACTORY EXPLAINATION FOR ITS DECISION."

Meyers v. U.S. 272 U.S. 52,116, 47 S.Ct.21,25 Motor Veh. v. State Farm, 463 U.S. 29 at 43; Railway Labor V. ICC, March 28,1986,Daily Journal 86 D.A.R. 919; Bounds v. Smith,87 S.Ct. 1491(agency's order invalid for failure to articulate reasons)

1/ were the determinative factor of revocation.

A servant is not greater than his master, nor a law more effective than the will of the People where it is sought to be enforced:"ABRAHAM LINCOLN, NUNC PRO TUNC TO THE UNITED STATES SUPREME COURT HONORABLE JUSTICES " T H Y W I L L B E D O N E ".

As seen on App A , the real motive behind Board and their prosecutors' ill will, is not the alleged non-production of records and the false charges of destroying of anything, but the two-hats that Petitioner JOHN CHOW is wearing, because Petitioners are(10a) dangerous competitors of BOARD,KNOX KEENE HEALTH PLAN under the supervision of the Attorney General's Office and KAISER FOUNDATION HOSPITALS of which Board member ROBERT TOOMAJIAN is the President and in charge of the in-patient-hospital-pharmacies which are excepted from the irrational,arbitrary,capricious and unconstitutional law: B & P § 4080.5.*(page 3 herein)*

The Judiciary is the final authority on issues of construction and must reject

Board's unconstitutional statutes [App.G through I]; picking and choosing at random in whimsical manner to satisfy their egos,inapposite to Congress' intent. See *Chevron v. Nat.Defense, 104 S.Ct. 2278; Korematsu v. U.S. 584 F.Supp. at 1420*

CONCLUSION

This case is not a mere episodic circumstance,but raised extraordinary issues of first impression: State Courts being influenced by agents and their con-conspirators(SHERIFFS,DEPUTIES A.G.,law firms, AGENCIES) using bullets to warrantlessly destroy businesses and homes,acts which are clearly criminal.

Accordingly, this case is not of "isolated significance" and presents great public import of egregious errors of injustice on the part of the lower courts,warranting damages to prohibit BOARD's act,and further reasons for granting Certiorary.

Respectfully submitted,

JOHN F.CHOW

ESTHER CHOW

I

APPENDIX TO

Petition for Writ of Certiorari to the Supreme Court of the State of California

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APPENDIX A

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION
AGAINST:

HEALING ART PHARMACY
ESTHER CHOW,NR/OWNER — NO. 1045
3100 Del Mar Ave
Rosemead,CA 91770 — L-23806
LICENSE NO. AD-17177

JOHN CHOW,R.L.
LICENSE NO. 21243
Respondent.

REPORTER'S TRANSCRIPT
MARCH 28,29,30,1984,Los Angeles, California

BEFORE: RONALD M. GRUEN
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE HEARING

APPEARANCES:

FOR COMPLAINANT:JOHN VAN DE KAMP,ATTORNEY GENERAL BY: EARL R. PLOWMAN, DEPUTY 3580 WILSHIRE BLVD LOS ANGELES,CA 90010

FOR RESPONDENT:GERALD M. COBB
ATTORNEY AT LAW
8484 WILSHIRE BLVD,SUITE 900, BEVERLY HILLS,CA 90211

Q What was being burned in 1982,Sir?

A Nothing was being burned

Q Do you recall burning anything at the location in Hesperia in June of 1982?

A NO, I NEVER BURNED ANYTHING.

Q DO YOU STORE PHARMACY DOCUMENTS AT THAT LOCATION ?

A NO.

Q was made by Deputy Attorney PLOWMAN, A was the answer of Dr. CHOW during March 29,1984 ALJ Hearing(pages 259-260)

Q You indicated in July you were told of a conversation regarding blocking out names and addresses, a conversation supposedly to have been had between an attorney by the name of O'Hara and deputy attorney

general Jane Wigod?

A That was the representation I received on the telephone call, yes Sir. (page 146)

Q Mr. Sain, you were interested in obtaining physical control on these prescriptions, isn't that correct?

A That's correct,sir.

Q Photocopying the prescriptions minus the patients' names and addresses would not have been satisfactory in your mind; is that a fair statement? (p 147)

A That's correct,sir.

Q Were you told of an agreement between the deputy attorney general and the attorney for the pharmacy,Mr.O'Hara, that it was understood and agreed that such copying procedure would be followed; isn't that correct?

A That was one of the options that I was given, yes sir.

Q All right, there is no requirement that a prescription triplicate form bear the designated medicine in type-written form is there?

A The requirement is only that when the triplicate copy is forwarded to the bureau of narcotic enforcement, if it is not legible and clearly readable, it will be so rendered. It can be done by typing or handwriting or rubber stamp if you have one.(p 209)

A Would be expected to consult the origical document to determine what actually was said and compare that to the copies so they could read it(p210)

Mr. Plowman: The position taken by Respondents is that(p 102)they are the victims of harrassment by the Board of Pharmacy and that if I may, I would be happy to produce all of the court documents in which this is demonstrated but that I want to demonstrate that the

Chows have made similar complaints to a variety of locations. Every one seems to be harrassing them.

Mr.COBB: And,therefore, there is no harasment and, therefore, the subpoena is valid and based on reasonable excuse and the logic is simply not there. It's a bunch of non sequiturs that are being strung together to support a contention that simply is not supported. It's just a departure into a wholly irrelevant line of questioning.

The Temple City Sheriffs have nothing to do--

ADM.LAW JUDGE: That's one point.

MR.COBB: If it was part of the declaration and support of the subpoena,we would have a different matter.

ADM.LAW JUDGE: That is one point. The other point is that the issue of harrasment is something which rests with the Respondent to establish or show the lack of probable cause, if you will, for the issuan-

ce of a subpoena duces tecum, that in fact there were reasons other than the legitimate motives for the issuance of a subpoena and demands for the documents. He has not put any evidence to that effect at this time. I am talking about evidence under oath or documents in the record. The burden of the respondents is to establish that.(page 303)

Q And he explained the provision about taking prescriptions and giving you a receipt for them?

A It says copy of prescription; it did not say original (p 352) prescriptions. I mean original prescriptions. It only says pharmacy copies. That's what it says clearly. (see p 46a)

Q So in the normal course of business you only keep one copy of a prescription on hand?

A Not copy; original.

Q I'm saying one document.

A Which is an original.(pp 352,353)(Esther)
A

Q At some point in time, was there a discussion had between you and the pharmacy inspectors about sending a copying service to make copies of those schedule II prescriptions?

A A copying service?

Q Yes.

A No.

Q At some point in time was there a discussion that you as the pharmacy would make copies of the prescriptions?

A Yes, but with the names blocked out and addresses(Esther's answers p 357)

ADM.LAW JUDGE: She(Esther) has testified to that counsel. You also have exhibit 15 in evidence which goes into some detail, a litany of complaint and problems that she has experienced with Mr.SAIN and the Board of Pharmacy. How much more is there that has to be put on the record to prove that point?

MR.PLOWMAN: I am sure I can put in at least

five more exhibits on that particular point.

ADM.LAW JUDGE: I'm sure you can(p381).

CLOSING ARGUMENT AND PRAYER FOR ADMINISTRATIVE ORDER FOR DECISION WITH AN ACTION

By PLOWMAN: In this particular situation your Honor, the arrangement that the Respondents have has frustrated the entire purpose of the pharmacy act in the way it's being operated. It's submitted that this constitutes unprofessional conduct in and out of itself separately and severally. It is, however, our request that findings be made, one, that the prescriptions involved while the regulation is no longer in effect are and were uncertain on their face and should not have been filled in that they did not use commonly accepted abbreviations B/ and to fill them was unprofessional conduct by pharmacist CHOW, and,secondly,with

B/ methyl used.is not a code(App.H,p46a)

reference to the surrender of the records that we have demonstrated clearly the need for the records, that we have validly asked for them,that we validly informed the Chows of the clause, correctly stated to them § 4232 in conjunction with § 11195,that that there was a refusal which is a violation of the pharmacy act. It is a violation of the Health and Safety Code and similarly is unprofessional conduct.

Thirdly, that we went even further. We did not have to. We secured a subpoena and that was not complied with and that the present, if you will, ABILITY TO COMPLY WITH THAT SUBPOENA STILL EXISTS IN OUR OPINION. . . (p 404) see'p17a'

Mr.PLOWMAN: Yes, your Honor, if I may. I appreciate your indulgence. Taking the matter sequently and very briefly,again we assert our contention that a prescription is in fact a recipe,in fact prescriptions were coded and they were uncer-

tain. (App.H,p 46a ,App.B,p 15a)
With respect to § 4080.5, counsel says there should have been some urgency at that time. It was enacted in 1980 and it gave the Chows five years to divest of holdings such as this.

What we have been presented here, your honor, with reference to counsel's contention about the coding of prescriptions, that there is some specific significance that not until I believe May 1980 that this question is written up in an investigative report. This is somehow very significant that the issue was fabricated at a later date.

We think this is somewhat analogous to Mrs. Chow's police report. By analogy,your honor, it seems that the loss of documents that were supposed to have been surrendered pursuant to the court order some three weeks before is something that should have required a writing or the rendering of a writing,something more than a nota-

tion in a police report, " Miscellaneous Pharmacy documents." * /police made report

It takes the credulity of someone who testified she spent so much time with these particular officers and was so concerned now in her testimony or as representing this time about what was taken out of the car that she signed a report that simply said, " miscellaneous pharmacy documents."

Thereafter,your honor, there are several filings of documents by Mrs.Chow which do not make any reference at all to the documents having been stolen. /** It is submitted this is something just like the allegations made by counsel concerning the question of coding of prescriptions. If this was true or if this was so important, there should have been some writing referring to it somewhere at some reasonable point in time.

Now, with privilege to the question of privilege, your honor,we're within

**/court refused to hear explaination

the uniform controlled sentences act pursuant to § 11158, a prescriber is prohibited from directly dispensing schedule II medications. It's been the law for sometime, your honor. What we have here by virtue of what has been set up by the Chow is a neat exception to the law. Specifically, Dr.Chow does through himself as a pharmacist what he cannot do directly. He is limited with schedule II medication only to a 72-hour supply in an emergency situation.

YOUR HONOR, TYING THIS IN WITH 4080.5 IT IS SUBMITTED WHAT IS DEMONSTRATED IS THE LEGISLATIVE POLICY WHICH CLEARLY SEEKS TO OUTLAW THIS PRACTICE AND IT IS OUR CONTENTION THAT IN FACT THE CHOWS ARE GUILTY OF UNPROFESSIONAL CONDUCT IN PARTICULAR IN THIS TYPE OF AN AFFAIR.(p 419)

That John Chow,M.D. is, as we have said, doing indirectly that which he is prohibited from doing directly. It's our contention this situation should not exist.

It is our contention that the law has been violated in this area, that unprofessional conduct has been permitted and,we submit to be forward looking, we would request an order in this matter which would either call for the revocation of the pharmacy permit or in the alternative,your honor, a restriction imposed that this particular pharmacy in accordance with the uniform controlled sentences act and Business and Professions Code § 4080.5 prior to the time the law change shall prohibit Respondent from this sort of incestuous arrangement, that is , John Chow, pharmacist,filling John Chow,M.D., prescriptions.

The pharmacy should be prohibited at a minimum from filling prescriptions by John Chow,M.D., under any circumstances. We contend what is set forth here with reference to consent to fill prescriptions makes no sense. It's a nullity.

What we are presented with,though,is a situation where,from the context from which

it is stated as to how this occurs, an inference seems to be drawn even though it is denied that the prescription might not be written unless somebody signs the consent form first, that they will be filled at Healing Art Pharmacy. We suggest, your honor, this is imporper. We suggest,as we stated before that the requirement of the pharmacy laws are what is at stake here and the operation of a pharmacy and no one is asked to see John Chow's medical records, albeit we could fairly see that at some point becoming an issue but for purposes of our investigation all we asked for were documents demonstrating prescriptions of some of the most dangerous drugs that are available from a pharmacy.(12% only)

On that basis, your honor, we would submit with the recommendations that we we have made that a decision be issued with the appropriate findings and an action and decision made out outlawing this sort of practice we have before us. End of hearing.

APPENDIX B

15a

STATE OF CALIFORNIA

Face Sheet For Filing Administrative Regulations With The Office Of Administrative Law

ENDORSED
MARCH 22, 1983

The attached are true and correct copies of regulations adopted,amended,or repealed by:

State Board of Pharmacy
(Agency)

August 9,1982(date)

By: Claudia Foutz(Signature)
(Agency Officer with Rule-making Authority)

AGENCY CONTACT PERSON AND POSITION

CLAUDIA FOUTZ, Executive Secretary

2. Indicate California Administrative Code Title and Specify Setions to be Amended, Adopted,and/or Repealed:

Title 16

Sections Repealed:. . §1763(Coded Rx)[a]/

a/after ESTHER's letter to the Board's attorney Mr.ROBERT MILLER(June 14, 1982)

APPENDIX C

16 a

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION ONE

In Re ESTHER CHOW on habeas corpus

2 Crim. No.43022

Filed Nov. 30,1982

Robbins

ORIGINAL PROCEEDING: Petition for Writ of habeas corpus. Writ granted.

Gerald M.Cobb for Petitioner

George Deukmejian Attorney General and Gail M.Heppel,Dep.Attorney Gen.for Real Party in Interest.

Page 2: Petitioner,ESTHER CHOW, was held in contempt by the trial court(Judge THOMSON) for noncompliance with an order compelling production of ducuments. She filed a petition for writ of habeas corpus in the Supreme Court. On July 23,

1982, the Supreme Court stayed the contempt order pending final disposition of this matter, The Supreme Court on August 11, 1982, issued an order to the Superior Court of Los Angeles County to show cause before this court why the relief prayed for should not be granted. The stay order filed July 23 was ordered to remain in effect.. . .

Page 3: Petitioner contends that the order adjudicating her to be in contempt is <u>invalid because there is no finding of a continuing ability to comply.</u>

There is no finding in either the adjudication of contempt or the order of commitment that petitioner <u>WILL BE ABLE IN THE FUTURE</u> TO COMPLY WITH THE ORDER TO PRODUCE DOCUMENTS. The court imposed no punishment under C.C.P. § 1218, but instead proceeded under C.C.P. § 1219 to compel future compliance with the order. C.C.P. § 1219 reads as follows: "When the contempt consists of the ommission to

perform an act which is yet in the power of the person to perform, he may be imprisoned[sic]until he has performed it, and in that case the act shall be specified in the warrant of commitment". " SUCH A JUDGMENT MUST NOT ONLY SPECIFY THE ACTION TO BE PERFORMED; IT MUST ALSO INCLUDE A FINDING THAT SUCH ACT IS AND WILL BE WITHIN THE POWER OF THE CONTEMNOR TO PERFORM. [Citation]" (In re Moulton ,1950, 100 Cal.App2d 559,563.) THERE BEING NO SUCH FINDING IN EITHER THE ADJUDICATION OF CONTEMPT OR THE ORDER OF COMMITMENT, petitioner is entitled to relief.

Furthermore, petitioner has already been incarcerated for contempt for a period exceeding the five-day maximum allowed under C.C.P. § 1218. Any additional incarceration on the contempt matter would violate the proscription against double punishment.(Pen.Code, §654; In re Farr(1976),64 Cal.App3d 605)

APPENDIX D

19a

SUPERIOR COURT OF THESTATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

JOHN F.CHOW,ESTHER CHOW and HEALING ART PHARMACY, Petitioners, vs. BOARD OF PHARMACY,DEPARTMENT OF CONSUMER AFFAIRS,et al., Respondents.	) C 499679

Los Angeles, California, Tuesday,August 28, 1984: 9:00 AM (page 45)

THE COURT: This is a proceeding under § 1094.5 of the Code of Civil Procedure. I have reviewed the administrative record. I have read it. It's received in evidence by reference. The independant judgment test is the applicable test to be applied. .

MS.O'BRIEN: Contempt is a remedy for that.

And they did not meet their burden of proof that there was any ability to comply,which is upheld by the Appellate Court, I don't see that there is any ability to comply that can be used in revoking the license.

THE COURT: IF A VALID ADMINISTRATIVE SUBPOENA IS GIVEN TO A LICENSEE TO TURN OVER THE RECORDS--LET'S ASSUME THAT IT IS VALID--AND THE LICENSEE BURNS THE RECORDS. . .AND LET'S SAY THEY BURN THE RECORDS BEFORE ANY COURT PROCEEDING. . .

MS.OBRIEN: Your Honor, THERE IS NOTHING IN THE TRANSCRIPT,OR ANY WITNESS THAT CAME IN TO TESTIFY THAT THERE WAS ANY--

THE COURT: FOCUS ON THAT QUESTION.

MS.OBRIEN: -- that there was any burning of records.

THE COURT: Focus on that question that I asked you. In that hypothetical situation, if you are right in your argument, I think it would follow that the

(page 51) records would be subject to no sanctions at all because contempt clearly wouldn't lie.

MS.OBRIEN: Your Honor, the ability to comply is as to getting an investigational subpoena, not a subpoena to a hearing. And what went on with that subpoena was clearly protective orders and continuances. .

THE COURT: I am trying to test the argument that BURNING THE RECORDS IS A TEST . .

MS.O'BRIEN: I feel if an administrative investigational subpoena for records which have already been seen very many times, and all the information is on it, even the addresses that were copied--and there was never any reason for the subpoena,numer one, because they had the information they wanted--and if it goes to the extent that you cannot comply, and there is nothing in the transcript whatsoever, Your Honor, that I can see that shows that they were destroyed or

secreted, I think that is beyond the scope of what anybody can consider. I know you are talking about burning records. The only thing that was said about that(p 52) was by the counsel here. THE A.G. THAT WAS STANDING HERE, NOT UNDER OATH,TALKING ABOUT SOME RECORDS THAT WERE BURNED. THERE IS NO EVIDENCE, NO WITNESS, NOTHING SAYING--

THE COURT: There is other evidence..

MS.O'BRIEN: We disagree....

Well, I believe clearly there is no clear and convincing evidence, your Honor,that shows that there was any destroying or secreting of the evidence. (p 53) .... Hon.Judge Norman Epstein.

RESPONSE TO ORDER TO SHOW CAUSE TO DETERMINE BOARD'S COMPLIANCE WITH PEREMPTORY WRIT (Dept.86, March 28,1986,9:00 AM)

Respondent hereby makes this response to petitioner's motion:ARGUMENT IV(p 8)

RESPONDENT OBJECTS TO INTRODUCTION

OF PETITIONER'S EXHIBITS

Petitioner has appended a number of exhibits to her motion. Respondent objects to the introduction into evidence or consideration by the court of the following exhibits: D,E,F and G. These exhibits are not part of the administrative record,nor are they relevant to the present action,nor do they satisfy the standards under C.C.P. § 1094.5(e) for introduction of new evidence. . . (records were concealed since 9/16/82)

CONCLUSION

Respondent respectfully asks this Court to enter an order discharging the peremptory writ.

Dated: March 21, 1986 _____

GAIL M. HEPPELL
Dep.Attorney Gen.
For Respondent

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN F.CHOW,ESTHER CHOWand HELAING

ART PHARMACY, Petitioners,

vs.

BOARD OF PHARMACY,DEPARTMENT OF CONSUMER AFFAIRS,et al.,

Respondents.

CASE NO. C 499 679

PEREMPTORY WRIT OF MANDATE

Filed November 20,1984

By John J.Corcoran,County Clerk

TO: BOARD OF PHARMACY,DEPARTMENT OF CONCUMER AFFAIRS.STATE OF CALIFORNIA

YOU, the Board of Pharmacy, are hereby commanded immediately after receipt of this Writ to:

1. Vacate and set aside your decision dated May 10,1984 revoking pharmacy license no: AD-17177 and permit no" AE 18430 issued

to HEALING ART PHARMACY, ESTHER CHOW non-pharmacist/owner;

2. Vacate and set aside your decision dated May 10,1984 revoking licentiate certificate no: PC 21243 issued to John Chow, R.L.

3. Determine the appropriate penalty as to Esther Chow based on her failure to produce prescription files pursuant to a duly issued subpoena duces tecum, considering both that Esther Chow failed to obey a proper subpoena duces tecum and that she deliberately destroyed or concealed the files

4. Determine if discipline as to John Chow is to be imposed upon John Chow for deliberately destroying or concealing the prescription file,and,if so, what discipline should be imposed.

You are further commanded to make and file a return to this Writ in 60 days from the date a copy of this Writ is served on you showing what you have done to comply with this Writ.

WITNESS the Hon.Norman L.Epstein, Judge of the Superior Court.

ATTEST my hand and the seal of this Court this_____15 day of November,1984.

_____

NORMAN L EPSTEIN

CHOWS' Footnote:

These charges were trumped up during the secret burglary in Hesperia where the sheriffs of the San Bernardino County admitted that the alleged "drugs" were destroyed instantly,inapposite to 18 U.S. C. § 2236,warrantless search and seizures causing the "birth" of the words burning secreting or destruction,which CHOWS are denied to confront and challenge the accusors,violation of the FOURTH,FIFTH AND SIXTH AMENDMENT.

All statements were hidden from CHOWS and the Lower courts refused to introduced these new evidence for the hearing,inapposite to *Hernandez-Ortiz v. INS, 777 F2d 509,9th,1985*(Ortiz cited *INS v. PINEDA, 105 S.Ct. 2098)* who argued that

"HERNANDEZ' MOTION TO REOPEN IS BASED ON EVENTS THAT TOOK PLACE SUBSEQUENT TO HER INITIAL DEPORTATION HEARING AND WHICH THUS COULD NOT HAVE BEEN PRESENTED IN THE ORIGINAL PROCEEDING". Held: Board abused Ortiz.

NOT FOR PUBLICATION

IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION FOUR

JOHN F.CHOW,et al.,

Plaintiffs and Appellants,

vs.

BOARD OF PHARMACY,DEPARTMENT OF CONSUMER AFFAIRS,

Defendants and Respondents.

NO.B008798

(Sup.Ct. C499679)

Court of Appeal Filed Nov 4,1985

APPEAL from a judgment of the Superior Court of Los Angeles County. Norman L. Epstein, Judge. Affirmed.

John F.Chow and Esther Chow, in pro per., for Plaintiffs and Appellants.

John van de Kamp, Attorney General,and Gail M.Heppell, Deputy Attorney General, for Defendant and Respondent.

Dr.John F.Chow, Mrs, Esther Chow and Healing Art pharmacy appeal the judgment rendered pursuant to their petition for Writ of Mandate against the Board of Pharmacy of the State of California.

Appelants contend that: (1) the trial court erred in determining that Mrs. Chow could be disciplined for not complying with the investigative subpoena duces tecum,since the subpoena is invalid; (II) the doctrine of res judicata and mootness bar further punishment of Mrs. Chow, who has already been punished by the Superior Court for the same act of non-compliance; (III) the trial court erred in accepting the unsubstantiated finding by the administrative judge that appellants "deliberately destroyed or secreted" the prescription files they had been ordered to produce by the investigative subpoena duces tecum; (IV) the peremptory writ of mandate should be dismissed,since res-

pondent did not file a return to the writ as it was commanded to do by its term.

Finding no error, we affirm. .

In April 1980, an on-site audit of three controlled substance Schedule II drugs was conducted at the pharmacy by inspectors from the pharmacy board. .

At the pharmacy, the inspectors found: (a) shortages in the three-controlled substance drugs audited ; (b) the majority of the patients who bought the drugs were written by Dr.Chow; and (e) the coded prescriptions needed further clarification by Dr. Chow. Based on these findings, an accusation was filed in March 1981,with the Board of Pharmacy,charging appellants with violating Business and Professions Code § 4350.5 and 4232 in conjunction with California Administrative Code,Title 16 § 1763.

CHOWS' Footnotes:

Respondents denied CHOWS to exhaust their administrative remedies,and accused CH, (methyl) to be a code,inapposite to App. B ,that §1763 was repealed in 1982 after ESTHER wrote an opposition letter on 6/14/82.

The inspectors revisited the pharmacy in July 1981, to review the prescriptions and update the audit. . .

The Director of the Department of Consumer Affairs, " [p]ursuant to the powers granted upon him by § 11180 through § 11192 of the Government Code,"issued an investigative subpoena duces tecum.(Compare with App.G). The subpoena commanded Mrs. Chow to appear before a named inspector of the Board on November 30,1981,to testify and answer questions propounded to her in connection with an ongoing investigation. Mrs. Chow is also ordered to bring with her "the complete prescriptions files for controlled Schedule II drugs filled during the period of July 5, 1979 to April 24, 1980." Mrs. Chow did not comply with the terms of the subpoena.[a/]

In May 1982, the Los Angeles Superior Court granted the Board of Pharmacy's petition to compel production of the documents.

a/ CHOWS footnote: No summons,no complaint, no administrative hearings after the Notice of Defense filed by CHOWS on March 30,1981.

Mrs. Chow, as owner of the pharmacy,was ordered to produce by May 28,1982,all the documents named in the investigative subpoena duces tecum served on her earlier.Mrs. Chow did not produce the documents. She claimed that the documents were stolen from her locked car on June 6, 1982,when it was towed away from where it had been parked all day near a fire hydrant.[b/]

Mrs. Chow was found guilty of contempt for non-compliance with the order of the court compelling production of the documents, and was imprisoned on June 30,1982. She was released on July 23, 1982,when the California Supreme Court stayed the contempt order pending final disposition of the matter. IN November 1982, the Court of Appeal granted Mrs. Chow's petition for a writ of habeas corpus. The appellate court held that since there was no finding as to Mrs.Chow's ability to comply with the subpoena, her punishment

b/SDT is null and void,see App.H,p42a

under § 1219 of the Code Of Civil Procedure was invalid...[c]/ . . It is therefore stated that any additional incarceration on the contempt matter would violate the proscription against double punishment.[d]/

A supplemental accusation was filed with the Board of Pharmacy in June 1983.[e]/ It was alleged therein that the pharmacy was subject to discipline for non-compliance with the investigative subpoena duces tecum.[f]/

CHOWS' Footnotes:

c/ See Code of Civil Procedure §§ 128(c), 1986,2016,2018(c); Government Code §§11504, 11510 (inspector SAIN,who desired to take ESTHER's 'deposition' is not authorized to do so because he is not an attorney,nor is he authorized to 'administer oath' upon ESTHER)

d/ See *Zeller v. Rankin,633 F2d 844, 101 S.Ct. 2020 (*judge Thompson lacked total and complete jurisdiction,F.R.C.P. Rule 3 and 4; C.C.P.§§410.10,410.50: personal and subject matter are conjunctional)

e/ Board filed this <u>two days</u> after ESTHER filed an action for false imprisonment and malicious prosecution on JUNE 8,1983.

f/ See *Matter of Lambert,134 Cal.626,632-633(due process of law does not mean according to the whim,caprice,or will of a judge)*

In March 1984, hearings were held before an administrative law judge. Appellants were present and represented by counsel.. . Appellants' refusal to permit the pharmacy board inspectors to remove the prescription files from the pharmacy to the board's office constitutued good cause for the issuance of the investigators' subpoena duces tecum.

The subpoena itself was validly issued. Government Code § 11181(e),authorizes the head of a department to issue subpoenas for the. . production of papers,books. . .[g]/ . . .The earlier proceeding dealt only with the propriety of punishing Mrs.Chow for contempt for non-compliance with the"order". . . There still remains a live controversy regarding the disciplining of the pharmacy and Dr.and Mrs.Chow by way of license revocation. .

g/ See App. G ,the mandatory procedures must be conducted in accordance with Gov. Code § 11340-11528,inludes Gov.Code § 115IO and condition precedent to §1986 of Code of Civil Procedure[charges made against CHOWS for allegedly violating § 4350 et seq

In March 1984, hearings were held before an administrative law judge. Appellants were present and represented by counsel. .[h]/ Appellants' refusal to permit the pharmacy board inspectors to remove the prescription files from the pharmacy to the board's office constituted good cause for the issuance of the investigators' subpoena duces tecum.[i]/ The subpoena itself was validly issued. Government Code § 11181(e),authorizes the head of a department to issue subpoena for the. .production of papers, . .[j]/

CHOWS' Footnote:

h/ Unknown to CHOWS,their pharmacy and home in Hesperia,California were the subjects of illegal burglaries where BOARD assisted by San Bernardino Sheriffs,CA,the attorney general deputies,destroyed properties after fabricating false statements accusing CHOWS of burning,secreting or destroying,the birth of those words on OCTOBER 26,1982,where sheriffs used bullets to enter the home and accused "GOD" of destroying the home:NO FOUNDATION,ARTICULATING THE REVOCATIONS/reasons

i/ See Gov.Code §11510 and *Camara,87 S.Ct. 1741*

j/Inapposite to Bus.& Prof.Code §4350,the charges made against CHOWS on MARCH 4,1981: "the dye is cast" and Board cannot use 'old' wineskin for 'new wine'.[page 3] Board indiscriminately picking and choosing laws

Appellants contend that the evidence does not support the finding by the administrative judge that appellants "deliberately destroyed or secreted" the prescription files. Where as here, the nonavailable documents were in the sole custody and control of appellants who had the motive and opportunity to destroy them, the prosecution is not restricted to eyewitness' testimony that destruction by appellants occurred. Instead, it may prove this fact by circumstantial evidence. (People v. Baker, 1974, 39 Cal.App.3d 550,556) .[k/]

CHOWS' Footnote:

k/ Baker's case had the facts that the court's clerk saw the records "floating in the courthouse toilet bowl" while CHOW's case, there was never any trustworthy evidence as stated in *Rainey v. Beech Aircraft Corp., 784 Fv2d 1523;* see *Exxon v. Hunt, 106 S.Ct. at 1112 and App. D pp 19a through 23a].* THE BEST OF THE EVIDENCE,NOT THE WORSE

See Black's Law Dictionary under CIRCUMSTANTIAL EVIDENCE: Circumstantial evidence "consists in reasoning from the facts which are known or proved to establish such as are conjectured to exist."

The administrative and trial judges found that appellants were responsible for the destruction of the subpoenad documents. . . .[1]/ (fabricated during burglary by Board)

Since appellants were the petitioners, and since they obtained partial relief, dismissal of the writ would result in denying appellants that relief which they had been afforded. [2]/ On April 1986,court dismiss entire Writ asked by BOARD and granted.

End of unpublished Order.

Clerk's Office,Supreme Court

4250 State Building,San Francisco,CA 94102

JANUARY 15, 1986

I have this day filed Order DOCKET OF LA

54II 2668

REVIEW DENIED + REQUEST FOR STAY

In re: 2 Civil No B 008798

John F.Chow,et al v. Board of Pharmacy,et al

Respectfully, Clerk

APPENDIX G

37a

Department of Consumer Affairs

CALIFORNIA STATE BOARD OF PHARMACY 1020 N.Street,Sacramento, California 95814.Ph:(916)4455014

June 6, 1985

Esther Chow
Healing Art Pharmacy
3100 Del Mar Ave
Rosemead,CA 91770

Dear Mrs. Chow:

This letter is to confirm that your letter of May 16, 1985 has been reviewedand your agreement was acceptable. As a result, you were permitted to resume operation of your pharmacy.(m/three times being revoked) Please be advised that this process takes four to six weeks. The Board considers Healing Art Pharmacy,license number ZF 18430 to be current and in full force and

m/ beating the dead horse over and over again for non-existing burning,secreting or destroying of anything at present.

effect.

If you have further questions regarding the status of your renewal license, please contact Linda Kassis at (916) 445-5014.

Sincerely,

_____(signature)
LORIE GARRIS RICE
Executive Officer

LGR: lk

cc: Naomi Ward
Enforcement Coordinator

Earl Plowman
Deputy Attorney General

APPENDIX G

39a

State of California
Department of General Services
Ofifces of Administrative Hearings
717 K Street,Sacramento,CA 95814

314 West First Street
Los Angeles,CA 90012 (213) 620-4650

July 16,1984

Esther Chow
3100 Del Mar Ave
Rosemead,CA 91770

Dear Mrs. Chow:

I am in receipt of your letter dated 4/10/84.

In answer to your questions,our hearings and procedures are conducted in accordance with Administrative Procedure Act which is found in the Government Code, §§ 11340 through 11528. . .

Very truly yours,

CARL A. PIERSON
Administrative Law Judge in Charge
Los Angeles

CAP/jm

APPENDIX H

Code of Civil Procedure:

§ 1985. Subpoena:Issuance;Affidavit

The process by which the attendance of a witness is required, is the subpoena. It is a writ or order directed to a persons and requiring his attendance at a particular time and place to testify as a witness. ."
. . a copy of an affidavit shall be served with the subpoena duces tecum

§ 475. Disregard of Nonprejudicial Error
Presumption Against Prejudice

"The court m u s t , in every stage of an action, disregard any error,improper ruling,instruction,or defect. . which does not affect the substantial rights of the parties. . . There shall be NO PRESUMPTION THAT ERROR IS PREJUDICIAL, OR THAT INJURY WAS DONE IF ERROR IS SHOWN. Leg.Hist.1872,1897 p44."

§ 128(8):

To amend and control its process and orders so as to make them conformable to law and justice .
Notwithstanding § 1211. .if an order of contempt is made affecting. . any person acting under the attorney's direction. .the execution of any sentence S H A L L B E STAYED pending the filing within THREE JUDICIAL DAYS OF A PETITION FOR EXTRAORDINARY RELIEF testing the lawfulness of the court's order,the violation of which is the basis of contempt. ."

§ 1235.060-- SHALL and MAY

Principles of Construction:
SHALL is mandatory and MAY is permissive.

§ 1917, Chapter 3

Documentary Evidence Art. 2

Jurisdiction-Sufficiency To Sustain Record.

"The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties,and over the thing, when a specific thing is the subject of the judgment," Leg.Hist. 1872.

§657 : Grounds

. . .When a new trial is granted,on all or part of the issues ,the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated.

A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decicion,nor upon the ground of. . . unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision.

The order passing upon and determining the motion must be made and entered as provided in § 660 and if the motion is granted must state the ground or grounds relied upon by the court,and may obtain

the specification of reasons. If an order granting such motion does not contain such specification of reasons, the court must, within 10 days after filing such order, prepare, sign and file such specification of reasons in writing with the clerk. The court shall not direct the attorney for a party to prepare either or both said order and said specification of reasons.

§ 660. Hearing Application-Use of Reporter's Notes, Pleadings and Files-Time Limit 60 Days-Determination by Order

"On the hearing of such motion, reference may be had in all cases to the pleadings and orders of the court on file...

The hearing and disposition of the motion for a new trial shall have precedence over all other matters except criminal cases. . and it s h a l l be the duty of the court to determine the same at the earliest possible moment."

Government Code:

§11500. Defintions

" (f) Adjudicatory hearing means a state agency hearing which involves the personal or property rights of an individual, the granting or revocation of an individual's license, or the resolution of an issue pertaining to an individual; . such hearing shall include but not limited to all of the following:

(1) Testimony under oath
(2) The right to cross-examination and to confront adversary witnesses

§11502. Hearing Officers;duties;qualifi-

cations

"All hearings of state agency required to be conducted under this chapter shall be conducted by hearing officers on the staff of the Office of Administrative Hearings. . Each hearing officer shall have have been admitted to practice law in this state for at least 5 years. .

§11506. Notice of Defense,time,contents;form

right to hearing;mitigation statement

(a) Within 15 days after service upon him of the accusation,the respondent may file with the agency a notice of defense in which he may:

(1) Request a hearing
(2) Object to the accusation
(5) Present new matter by way of defense
(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense,and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. ."

§ 11507.7 Petition to Compel discovery

(a) Any party claiming his request for discovery pursuant to §11507.6 has not been complied with,may serve and file a verified petition to compel discovery in the superior court. . The petition shall state facts showing. .the refusal to comply. .
(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first filed with the ALJ hearing

failed . .or,refusal to comply with § 11507.6 or within 30 days after request,which ever is longer.If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief,the court shall issue an order to show cause. . The order. .shall be served upon the Respondent and his attorney of record IN THE ADMINISTRATIVE PROCEEDING. .The respondent party s h a l l have the right to serve and file a written answer or other response to the petition and order to show cause. ."

§11510. Subpoenas,service. .

(a) Before the hearing has commenced the agency. .shall issue subpoenas and SUBPOENA DUCES TECUM. .COMPLIANCE WITH THE PROVISIONS OF § 1985 of the Code of Civil Procedure S H A L L be a CONDITION PRECEDENT TO THE ISSUANCE OF A SUBPOENA DUCES TECUM. AFTER THE HEARING HAD COMMENCED THE AGENCY ITSELF. .MAY ISSUE SUBPOENAS AND SUBPOENA DUCES TECUM"(emphasis added)

ADMINISTRATIVE PROCEDURE ACT,Leg.Hist.79th Congress,1944-46:Document No.248(Senate)

Section 5(a) NOTICE-

Persons entitled to notice of an agency hearing are to be duly and timely informed(1) time,place,and nature of the hearing,(2) the legal authority and jurisdicton under which it is to be held, and (3) the matters of fact and law asserted.

(c) SEPARATION OF FUNCTIONS--Officers who preside at the taking of evidence

California Pharmacy Law (1980)

§480 (a) A Board may deny a license regulated by this code on the following grounds:
(1) Been convicted of a crime. . a plea or verdict of guilt or a conviction
(3)(b) . .no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under § 4852.01

§481. Each board under the provision of this code S H A L L develop criteria to aid it,when considering the denial. .revocation of a license . .

Criteria for Rehabilitation Required

§482. Each board . . s h a l l develop criteria to evaluate the rehabilitation of a person when:
(a) Considering the denial. .or
(b) Considering. .revocation. "

Procedure for Board Upon Denial

§485. Upon denial. .for a license,. . board s h a l l:
(a) File and serve a statement of issues in accordance with Chapter 5(commencing with § 11500) of the Government Code

§ 4331. Prescription Files

All prescriptions filled shall be kept on file and open for inspection by duly constituted authorities for a period of at least three years

and any person who wilfully fails to do so is guilty of a misdemeanor,and upon a conviction thereof shall be liable to a fine of not exceeding fifty dollars($50),and for each subsequent offense shall be liable to a fine of not less than $50,and not more than $100

§ 11195. Article 3. Copies of Prescrip-

tion.

Whenever the pharmacist's copy. .is removed. . investigator shall give to the pharmacist a receipt in lieu thereof.

§ 1712. Building Standards.

Any new pharmacy,or any existing pharmacy. .must comply with the following provisions:

(a). . Before a pharmacy permit is isused,the plans. .must meet the approval of the Board".

Webster Dictionary,Second Edition:

P 895: METHYL is the monovalent hydrocarbon radical(see Oxford Dictionary stating that methyl has been a 'radical' since 1840₇-NOT A CODE as accused by Board.

Continued APA ACT §5(a) NOTICE from p44a)

must make the decision. .The gist of this subsection is that NO INVESTIGATING OR PROSECUTING OFFICER SHALL DIRECTLY OR INDIRECTLY INFLUENCED THE OPERATION. "

APPENDIX I

CALIFORNIA STATE BOARD OF PHARMACY

1020 N.Street,Sacramento,CA 95814

Department of Consumer Affairs

AUGUST 24, 1984

Dr.John F.Chow,M.D.
3100 Del Mar Ave
Rosemead,CA 91770

Dear Dr.Chow:

This is in response to your letter of August 16, 1984.

Unfortunately, due to a fire at the Board of Pharmacy, I am unable to provide you with a copy of your "affidavit of personnel".

Sincerely,

Signature

LORRIE GARRIS RICE
Executive Officer

Footnote: ESTHER requested the "two hat" evidence on AUGUST 15, 1984(after ALJ hearing) and on AUGUST 17,1984,it was burnt.

DETERMINATIVE DECLARATION OF PETITIONERS JOHN AND ESTHER CHOW

Petitioners JOHN F.CHOW,M.D. and ESTHER CHOW,dba HEALING ART PHARMACY, hereby declare and say:

1. That Petitioners, if called to testify, they can do so competently from personal knowledge and truthfully.

2. That on APRIL 25, 1980, inspectors and investigators SAIN and GROW,on behalf of Respondent Board of Pharmacy,were offered zeroxed copies of all the subpoenad records which Petitioners had been &still being unlawfully charged with destroying burning or concealing them, the holding of the many constitutional law courts of the State of California which have reviewed the matter of the desired revocation of HEALING ART PHARMACY's permit. However, these functionaries refused to accept the subpoenad copies,prepared pursuant to deputy attorney general JANE WIGOD's agreement

with CHOWS' attorney Mr.O'HARA. During the audit,while inspectors were hand-copying the subpoenad records,the copied prescriptions were stacked up right before agents when each could verify copies while hand auditing.

3. Since May 1982, deputy attorney general HEPPELL influenced judge Thompson by writing three personal letters begging him to hold ESTHER and Mr.O'HARA in contempt,letters were destroyed in his chambers after ESTHER requested copies to be made and the entire court files 'disappeared' while ESTHER was falsely imprisoned on JUNE 30, 1982 until JULY 23, 1982.

4. Inspite of agents' legal counsel Ms.JANE WIGOD's advise to accept copies of subpoenad records,inspectors refused to do so since APRIL 25,1980,causing the theft.

We declare under penalty of perjury that the foregoing is true and correct and we execute this in Rosemead,CA on May 5,1986.

JOHN F.CHOW

ESTHER CHOW